

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 662 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS and  
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

MR B.D.DESAI, APP for appellant.  
MR NITIN M AMIN for Respondent Nos. 1, 2, 3, 4, 5

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CORAM : MR.JUSTICE K.R.VYAS and  
MR.JUSTICE A.M.KAPADIA

Date of decision: 18/01/99

Oral judgment (Per A.M. Kapadia, J.):

1. Respondents herein were tried by learned Additional Sessions Judge, Surendranagar, in Sessions Case No. 31 of 1990, for commission of alleged offences under Sections 147, 148, 149, 302, 324 read with Section 34 of the Indian Penal Code ('IPC' for short hereinafter) on accusation of having committed murder of Hira Jeka and causing injury to complainant, Vajabhai Govabhai, on 20.1.1990, at about 8 P.M., on the ota of Ramji Temple, at Jaravala village, Dasada Taluka of Surendranagar

District. The learned Additional Sessions Judge, after recording evidence, came to the conclusion that the prosecution has failed to prove the charge levelled against the respondents/accused and, therefore, recorded the finding of acquittal vide judgment and order dated 25.6.1991. The State of Gujarat, feeling aggrieved by the said judgment and order of acquittal, filed this appeal, by invoking the aids of the provisions of Section 378 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.PC' for short).

2. It was alleged against the present respondents that, on 20.1.1990, at about 8 P.M., in village Jaravala, in the Sub-District of Dhrangadhra of District Surendranagar, on the ota of Ramji Temple, the complainant Vajabhai Govabhai and his cousin, Hira Jeka, were sitting near the gate of ota. At that time, all the respondents/accused came there with weapons. Accused No.4 was having dharia, accused No.5 was having stick and accused Nos.2 and 3 were also having stick but accused No.1 was not having any weapon. It was further alleged that on the previous day, at Panchayat office, in the T.V. Room, Jilubhai, younger brother of Vaja Gova, was watching T.V. programme. He was having a stick with him. That stick just touched on the leg of accused No.1 Popat. Therefore, Popat abused the complainant's brother Jilubhai. At that time, the victim Hira Jeka, who was also present there, told the accused not to use abusive language and on account of this there was exchange of hot words between them. It was further alleged by the prosecution that on the day of the incident, when the complainant alongwith his cousin brother Hira Jeka was sitting on the ota of Ramji Temple, all the respondents/accused came there with weapons. At that time deceased Hira Jeka asked the respondents/accused as to why in small matter they came to quarrel. The deceased caught hold of accused No.1 Popat by his neck and gave him a slap. Therefore, accused No.1 - Popat brought out a knife and gave a blow to Hira Jeka on left side of his abdomen. Meanwhile, the complainant went there and raised shouts. Both the complainant and injured Hira Jeka ran towards Chora village. The respondents/accused chased them. The deceased who had received severe injury, fell down at Chora. Meanwhile, Kalu Khoda accused No.4 gave a dharia blow to the complainant on his head and accused No.2 Pratap also gave a stick blow on his head. By that time, witnesses gathered there and one Sindha Gokal received stick blow while trying to save the injured. It was further case of the prosecution that in a tractor, the complainant and his cousin brother were removed to

hospital at Patdi where Hira Jeka was declared dead by the medical officer while complainant and injured witness were treated.

A complaint in respect of the aforesaid incident was recorded at Camp Patdi which is under Bajana Police Station. Pursuant to the complaint, offence was registered and investigation was put into motion. At the conclusion of the investigation, accused were charge-sheeted for the commission of the offences as mentioned above.

On committal, the learned Additional Sessions Judge, Surendranagar framed charge against the accused for commission of the offences as aforesaid and as they pleaded not guilty, they were put on trial. At the conclusion of the trial, after recording, appreciating and evaluating the evidence, the learned trial Judge came to the conclusion that prosecution has failed to prove the charge levelled against the respondents/accused and, therefore, recorded finding of acquittal. It is this finding of recording of acquittal which is now in the anvil before us in this appeal at the instance of the State of Gujarat.

Learned Additional Public Prosecutor Mr. B.D. Desai has taken us through the testimonial collections in the case and assailed the judgment on various grounds. Firstly he has assailed the judgment contending that the learned Additional Sessions Judge has not appreciated the evidence in its true and proper perspective and misread the same. There are four eye witnesses including the injured and their evidence has been wrongly disbelieved by the learned Additional Sessions Judge. Though they have narrated the incident as per the happening of the events, merely on the ground of some contradictions in their evidence, the whole case of prosecution could not have been thrown overboard. He has also submitted that there was motive behind the commission of the crime as on the previous day a dispute had taken place between the accused and the victim parties. He has also criticized the judgment of the learned trial Judge on the ground that non-explanation of injuries on the person of the accused is not always fatal to the prosecution case and the learned trial Judge has not considered this aspect. Therefore, according to him, the learned trial Judge has wrongly recorded the order of acquittal and hence the appeal is required to be allowed by holding that the respondents are guilty for the commission of the aforementioned crime.

In counter submission, learned advocate Mr. Nitin Amin, with all vehemence at his command, submitted that the learned trial Judge has very rightly appreciated and evaluated the entire evidence in proper perspective and after giving due weightage to the evidence of the eye witnesses, which, according to him, is bristled with so many contradictions, cannot be given any countenance. He also submitted that the genesis of the crime is suppressed by the complainant. He submitted that the complainant has suppressed not only the injuries on the person of accused but also in that regard lodging of a complaint by the accused for the offence under Section 323 of IPC. He, therefore, submitted that no interference is called for by this Court and the judgment and order recorded by the learned trial Judge acquitting the respondents/accused may be confirmed and the appeal may be required to be dismissed.

We have given our anxious and considerate thought to the rival contentions of learned advocates for the parties. We have perused the evidence on record through which we have been taken by the learned advocates for the parties. We are of the clear opinion that no interference is called for so far as recording of the acquittal of all the accused is concerned, for the reasons which we would like to mention hereinafter.

So far as homicidal death of the deceased Hira Jeka is concerned, it is duly proved by medical evidence that he met with a homicidal death. He succumbed to the injuries which he has received during the course of the incident. Therefore, homicidal death is proved. Similarly, injury on the complainant, P.W.4, Vaja Gova, is also proved. But the question now remains is as to who were the authors of those injuries to the complainant and to deceased.

Firstly we may advert to the evidence of the complaint Vaja Gova, P.W.4, Ex.26. In the examination-in-chief, he has stated that accused No.1, Popat Khoda, was having no weapon in his hand. Thereafter immediately he has stated that accused No.1, Popat Khoda, has given knife blow to Hira Jeka on the abdomen. He has also stated that the alleged incident has taken place on the ota of Ramji temple. He has further stated that thereafter both the deceased and the complainant ran towards Chora and both of them were chased by the accused. At Chora the deceased fell down due to the severe injury sustained by him. Accused No.4 - Kalu Khoda gave a dharia blow to the complainant while accused No.3 - Rasik Khoda gave a stick blow on his head. Thereafter the accused/ present

respondents ran away. After that Deva Ratna, Bhoja Rama and Sindha Gokal came there and they were saved by them. In cross-examination he has unequivocally admitted that on the previous day while watching T.V. programme in the T.V. room of the Panchayat, a quarrel took place and at that time, deceased Hira Jeka was not present there. He has admitted in his cross-examination about the incidence of previous day while he has not stated a single word in examination-in-chief about the same. He has also admitted that he has not mentioned in his complaint about taking out knife by the accused No.1 from the abdomen portion.

In the complaint at Ex.27 he has given two versions. Firstly he stated that accused No. 1 was not having any weapon while immediately thereafter he has given version that accused No.1 took out a knife from his abdomen portion and gave blow to the deceased on his abdomen. According to us, this is a material contradiction. If accused No.1 was having knife at his abdomen portion, then the complainant could have mentioned about the same in his complaint. It was not the case of the prosecution that the said knife was hidden by accused No.1 inside his cloth. Therefore, the evidence given by the complainant is contrary to what he has stated in the complaint. As per the complainant's evidence, they were standing near the ota of Ramji temple where accused No.1 gave a knife blow to the deceased and thereafter when they started running, deceased fell down near Chora, while as per complaint, the aforesaid incident has taken place near Chora which is 200 ft. away from the ota of Ramji temple.

Aforesaid version of the complainant is also falsified by the panchnama of the scene of offence as well as his own complaint. On perusal of the panchnama of the scene of offence, the incident in question has taken place in the Chora where blood stains were found. Therefore, prosecution is not clear as to where the aforesaid crime was committed. In our view, the evidence of the complainant is not cogent, reliable, trustworthy and unimpeachable and that does not inspire confidence and, therefore, no reliance can be placed upon the same.

Evidence of the complainant does not get any corroboration from the evidence of other witnesses examined by the prosecution. According to the complainant himself and as per his complaint, after the incident was over, Deva Ratna, Bhoja Rama and Sindha Gokal came to the scene of offence. Therefore, according to his own version, they cannot be called eye witnesses

as they came after the incident was over while on perusal of the evidence of aforesaid three witnesses, Sindha Gokal, P.W.5, at Ex.28, Bhoja Rama, P.W.6, at Ex.29 and Deva Ratna, P.W.7, at Ex.30, they gave evidence as if they were eye witnesses and they have narrated during the examination in chief that they have seen the incident. That part of their evidence does not get any corroboration from the evidence of the complainant because as per the complainant, they came after the incident was over. Apart from that, they are all related to the complainant and, therefore, their evidence does not inspire confidence which can give corroboration to the evidence of the complainant and hence no reliance can be placed on their oral testimony to connect the accused with the commission of the alleged offence. Apart from this, the prosecution has neither recorded statement of other independent witnesses who were residing in the immediate near vicinity nor have been examined. Therefore, it raises serious doubt about the reliability of the prosecution version for connecting the respondents with the commission of the aforesaid crime.

Another infirmity in the prosecution case that we found is that the complainant has suppressed the fact of receiving injuries by the accused. Not only that, they have also suppressed the fact that a complaint was given by the accused for commission of a crime under Section 323 of the IPC which is on record, at Ex.50. Therefore, it has become clear that the complainant is not telling the truth so far as the genesis of the crime is concerned.

In view of the evidence which we have discussed hereinabove, we are of the opinion that there is no infirmity in the judgment of the learned Additional Sessions Judge and it does not require any interference by us. In our opinion, the evidence adduced by the prosecution is not trustworthy, reliable, cogent and unimpeachable which can connect the accused with the alleged crime.

Moreover, this is an acquittal appeal in which the Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of the learned trial Judge. As we are in general agreement with the view expressed by the learned trial Judge, we do not think it necessary either to reiterate the evidence of prosecution witnesses

or to re-state reasons for acquittal given by the learned trial Judge and in our view, expression of general agreement with the view taken by the learned trial Judge would be sufficient in the facts of the present case. This is so, in view of the decisions rendered by the Supreme Court in the case of (1) Girija Nandini Devi and others v. Bigendra Narain Chaudhari, AIR 1967 SC 1124 and (2) State of Karnataka v. Hema Reddy and another, AIR 1981 SC 1417.

The end product of the aforesaid discussion would be as under:

1. Homicidal death of Hira Jeka is proved.
2. Injuries on the person of complainant is also proved.
3. Evidence of the complainant does not inspire confidence. His evidence is bristled with contradictions qua his own evidence as well as complaint filed by him.
4. Evidence of other so-called three alleged eye witnesses also does not inspire any confidence as they came after the incident was over and they are related to the complainant and, therefore, interested witnesses.
5. Venue of the offence is also changed. There are two versions so far as the venue is concerned.
6. Genesis of the crime is suppressed by the complainant party.
7. Injuries on the accused person are neither explained nor mentioned.

In the premise, we are of the opinion that the prosecution has failed to establish the charge levelled against the accused/respondents and the judgment and order recording of acquittal does not require any interference at our hands and resultantly, the appeal being devoid of merit, deserves to be dismissed and it is accordingly dismissed. Bail bonds shall stand cancelled. Sureties are discharged.

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